

# Quick Reference Chart for Determining Removability for Alaska State Offenses

## Alaska Crime Chart

<b>Alaska Statute: (Muni. Codes: A=Anchorage J=Juneau F=Fairbanks)</b>	<b>Offense Description (Muni. Codes: A=Anchorage J=Juneau F=Fairbanks)</b>	<b>Removability Charge</b>
11.31.100 (F - §46-211)	Attempt (F – Nuisance subsec(16))	<p><b>Aggravated Felony:</b> <b>101(a)(43)(U):</b> Yes, if underlying offense is an aggravated felony.</p> <p><b>CIMT:</b> Yes, if underlying offense is a CIMT. <i>See Matter of Vo</i>, 25 I&amp;N Dec. 425 (BIA 2011), sustaining the DHS appeal and finding that an inchoate “attempt” offense is a crime involving moral turpitude (CIMT) under section 237(a)(2)(A) of the INA when the intended crime itself is a CIMT.</p> <p><b>Other:</b> Yes, if underlying offense is a removable or inadmissible offense.</p>
11.31.110 (A - §8.30.100)	Solicitation (A – Solicitation of illegal act)	<p><b>Aggravated Felony:</b> <b>101(a)(43)(U):</b> Yes, if underlying offense is an aggravated felony. However, solicitation to possess or deliver a controlled substance is not drug trafficking offense. <i>See Coronado-Durazo v. INS</i>, 123 F.3d 1322 (9<sup>th</sup> Cir. 1997).</p> <p><b>CIMT:</b> Yes, if underlying offense is a CIMT. <i>Matter of Gonzalez-Romo</i>, 26 I&amp;N Dec. 743 (BIA 2016) (affirming <i>Barragan-Lopez v. Mukasey</i>, 508 F.3d 899 (9<sup>th</sup> Cir. 2007) that solicitation of possession w intent to sell=CIMT). A conviction for solicitation to deliver could constitute a CIMT for large quantities of drugs. <i>See Barragan-Lopez v. Mukasey</i>, 508 F.3d 899 (9<sup>th</sup> Cir. 2007) (possession for sale of four pounds of marijuana constituted a CIMT).</p> <p><b>Controlled Substance:</b> No. <i>See Coronado-Durazo v. INS</i>, 123 F.3d 1322 (9<sup>th</sup> Cir. 1997).</p> <p><b>Reason to Believe:</b> <b>212(a)(2)(C):</b> Possibly, if drug related.</p> <p><b>Other:</b> Yes, if underlying offense is a removable or inadmissible offense.</p>
11.31.120 (F - §46-211)	Conspiracy (F – Nuisance subsec(16))	<p><b>Aggravated Felony:</b> <b>101(a)(43)(U):</b> Yes, if underlying offense is an aggravated felony.</p> <p><b>CIMT:</b> Yes, if underlying offense is a CIMT.</p> <p><b>Reason to believe:</b> <b>212(a)(2)(C):</b> Yes, if drug-related</p> <p><b>Other:</b> Yes, if underlying offense is a removable or inadmissible offense.</p>

## Quick Reference Chart for Determining Removability for Alaska State Offenses

11.41.100	Murder in the first degree	<b>Aggravated Felony: 101(a)(43)(A):</b> Yes <b>(F):</b> Yes if sentenced to a year or more. <b>CIMT:</b> Yes. <b>Domestic Violence:</b> Yes, if conviction record shows relationship to victim.
11.41.110	Murder in the second degree	<b>Aggravated Felony: 101(a)(43)(A):</b> Yes <b>(F):</b> Yes if sentenced to a year or more. <b>CIMT:</b> Yes. <b>Domestic Violence:</b> Yes if conviction record shows relationship to victim.
11.41.120	Manslaughter	<b>Aggravated Felony: 101(a)(43)(E):</b> (b) (5) <b>CIMT:</b> (b) (5) <b>Domestic Violence:</b> (b) (5)
11.41.130	Criminally negligent homicide	<b>Aggravated Felony: 101(a)(43)(F):</b> No. Use of force by criminal negligence does not qualify as a crime of violence. See <i>Fernandez-Ruiz v. Gonzales</i> , 466 F.3d 1121 (9 <sup>th</sup> Cir. 2006). <b>CIMT:</b> No. <b>Domestic Violence:</b> No. Crime of domestic violence has same analysis as crime of violence. Conviction record needs to show relationship to victim.
11.41.200(a)(1) and (a)(4)	Assault in the first degree—(a)(1)recklessly causing physical injury by mean of a dangerous instrument (a)(4) recklessly causing physical injury by repeated assault with a dangerous weapon	<b>Aggravated Felony: 101(a)(43)(F):</b> (b) (5)
11.41.200(a)(2) and (a)(3)	Assault in the first degree—(a)(2) intentionally causing serious physical injury (a)(3) knowingly engaging in conduct resulting in serious physical injury	<b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentenced to a year or more. (Under Fairbanks statute §46-326, victim must be a police officer in the actual or apparent performance of official duties) <b>CIMT:</b> Yes. <b>Firearms:</b> Yes, if conviction record indicates use of a firearm. <b>Domestic Violence:</b> Yes, if conviction record shows relationship to victim.

## Quick Reference Chart for Determining Removability for Alaska State Offenses

11.41.210(a)(1) F - §46-79	Assault in the second degree—with intent to cause physical injury, causes physical injury by means of a dangerous instrument (F – Domestic assault)	<p><b>Aggravated Felony:</b> <b>101(a)(43)(F):</b> Yes, if sentenced to a year or more. <i>See U.S. v. Hermoso-Garcia</i>, 413 F.3d 1085 (9<sup>th</sup> Cir. 2005) (conviction for assault in the second degree is categorically a crime of violence; language at issue tracks very closely to language in Alaska statute). However, <i>Fernandez-Ruiz v. Gonzales</i>, 466 F.3d 1121 (9<sup>th</sup> Cir. 2006), overruled some of the cases cited in <i>Hermoso-Garcia</i>, but did not expressly overrule <i>Hermoso-Garcia</i>. Further, in <i>United States v. Carson</i>, 486 F.3d 618 (9<sup>th</sup> Cir. 2007), the Ninth Circuit continued to cite to <i>Hermoso-Garcia</i> for the holding that assault in the second degree is categorically a crime of violence.</p> <p><b>CIMT:</b> Possibly. <i>See Fernandez-Ruiz v. Gonzales</i>, 468 F.3d 1159 (9<sup>th</sup> Cir. 2006) (noting that willfulness or “evil intent” is generally required for a crime to be classified as one involving moral turpitude).</p> <p><b>Firearms:</b> Yes, if conviction record indicates use of a firearm.</p> <p><b>Domestic violence:</b> Yes, if conviction record shows relationship to victim. (Required for conviction under Fairbanks statute)</p>
11.41.210(a)(2) and (a)(3)	Assault in the second degree—(a)(3) recklessly causing physical injury (a)(3) recklessly causing physical injury by repeated assaults	<p><b>Aggravated Felony:</b> <b>101(a)(43)(F):</b> No. Reckless/negligent use of force may not qualify as a crime of violence. <i>See Fernandez-Ruiz v. Gonzales</i>, 466 F.3d 1121 (9<sup>th</sup> Cir. 2006).</p> <p><b>CIMT:</b> No. Assault offenses require intentional conduct to be morally turpitidinous. <i>See Uppal v. Holder</i>, 576 F.3d 1014 (9<sup>th</sup> Cir. 2009).</p> <p><b>Firearms:</b> Yes, if conviction record indicates use of a firearm.</p> <p><b>Domestic Violence:</b> No. Crime of domestic violence has same analysis as crime of violence.</p>
11.41.220	Assault in the third degree – (a)(1), (4), (5)	<p><b>Aggravated Felony:</b> <b>101(a)(43)(F):</b> No. Reckless/negligent use of force may not qualify as a crime of violence. <i>See Fernandez-Ruiz v. Gonzales</i>, 466 F.3d 1121 (9<sup>th</sup> Cir. 2006).</p> <p><b>CIMT:</b> No. Assault offenses require intentional conduct to be morally turpitidinous. <i>See Uppal v. Holder</i>, 576 F.3d 1014 (9<sup>th</sup> Cir. 2009).</p> <p><b>Firearms:</b> Yes, if conviction record indicates use of a firearm.</p> <p><b>Domestic Violence:</b> No. Crime of domestic violence has same analysis as crime of violence.</p>
11.41.220	Assault in the third degree – (a)(2),(3)	<p><b>Aggravated Felony:</b> <b>101(a)(43)(F):</b> Yes, if conviction record shows use of force or the threat of force and sentence imposed is a year or longer.</p> <p><b>CIMT:</b> Possibly, depending on the record of conviction. <i>See Arriaga v. Mukasey</i>, 521 F.3d 219 (2d Cir. 2008) (analyzing a stalking statute with language that closely parallels the Alaska statute).</p> <p><b>Domestic violence:</b> Yes, if conviction record shows relationship to victim. “Family member” is broadly defined to include past and present spouses, fiancé(e)s, and persons in dating or courtship relationships.</p>
11.41.230 A - §8.10.010 F - §46-79 J - §42.10.010	Assault in the fourth degree (A – Assault) (F – Domestic assault) (J – Assault)	<p><b>Aggravated Felony:</b> <b>101(a)(43)(F):</b> No as intentional conduct is not required.</p> <p><b>(A):</b> Possibly under Anchorage code 8.10.010 if conviction documents establish the intentional use of force or violence..</p> <p><b>CIMT:</b> No. <i>See Matter of Fualauu</i>, 21 I&amp;N Dec. 475 (1996) (simple assault, with a reckless or negligent mens rea is not a CIMT)</p> <p><b>Firearms:</b> (b) (5) [REDACTED].</p> <p><b>Domestic Violence:</b> No under 11.41.230 as intentional conduct is not required. Under municipal provisions possibly if conviction documents establish intentional conduct and the relationship to the victim.</p>

## Quick Reference Chart for Determining Removability for Alaska State Offenses

11.41.260	Stalking in the first degree	<b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentenced to a year or more and record of conviction shows use/threat of force. <b>CIMT:</b> Possibly. <b>Domestic Violence—Stalking:</b> Yes, if conviction record indicates relationship with victim. Under INA §237(a)(2)(E)(i), proof of relationship may not be necessary to render alien removable; mere conviction of a stalking offense will be adequate. <b>Violation of a protection order:</b> Yes if convicted under subsection (a)(5).
11.41.270 A - §8.10.020	Stalking in the second degree (A – Stalking)	<b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentenced to a year or more and record of conviction shows use/threat of force. <b>CIMT:</b> Possibly. <b>Domestic Violence—Stalking:</b> Yes, if conviction record indicates relationship with victim. Under INA §237(a)(2)(E)(i), proof of relationship may not be necessary to render alien removable; mere conviction of a stalking offense is adequate.
11.41.300	Kidnapping	<b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentence to a year or more and record of conviction shows use/threat of force (b) (5) [REDACTED]
11.41.320	Custodial interference in the first degree	(b) (5) [REDACTED]
11.41.330	Custodial interference in the second degree	(b) (5) [REDACTED]
11.41.410	Sexual assault in the first degree	<b>Aggravated Felony:</b> 101(a)(43)(A): (a)(1) for sexual penetration without consent. <b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentenced to a year or more. <b>CIMT:</b> Yes. <b>Domestic Violence:</b> Yes, if record of conviction shows relationship to victim. Note that under specific circumstances, marriage to the victim is an affirmative defense. <i>See A.S. § 11.41.432(a)(2) and (b).</i>
11.41.420	Sexual assault in the second degree	<b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentenced to a year or more. <b>CIMT:</b> Yes. <b>Domestic Violence:</b> Yes, if record of conviction shows relationship to victim. Note that under specific circumstances, marriage to the victim is an affirmative defense. <i>See A.S. § 11.41.432(a)(2) and (b).</i>

## Quick Reference Chart for Determining Removability for Alaska State Offenses

11.41.425	Sexual assault in the third degree	<b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentenced to a year or more. <b>CIMT:</b> Yes. <b>Domestic Violence:</b> Yes, if record of conviction shows relationship to victim. Note that under specific circumstances, marriage to the victim is an affirmative defense. <i>See A.S. § 11.41.432(a)(2) and (b).</i>
11.41.427	Sexual assault in the fourth degree	<b>Aggravated Felony: 101(a)(43)(F):</b> Not likely. At worst, this crime is a class A misdemeanor and probably would not merit a one year sentence. <b>CIMT:</b> Yes. <b>Domestic Violence:</b> Unlikely due to the lack of a requirement for the use of force.
11.41.434	Sexual abuse of a minor in the first degree	(b) (5)
11.41.436(a)(1)  **statute appears to be divisible btwn alternative elements, see Alaska Jury instructions:  <a href="http://www.courtrecords.alaska.gov/webdocs/crpji/criminals.htm">http://www.courtrecords.alaska.gov/webdocs/crpji/criminals.htm</a>	Sexual abuse of a minor in the second degree	<b>Aggravated Felony: 101(a)(43)(A):</b> Yes SAM under <i>Estrada-Espinoza</i> , 546 F.3d 1147 (9 <sup>th</sup> Cir. 2008) (definition of SAM severely limited; criminal statute must contain the following elements: 1) a mens rea level of knowingly, 2) a sexual act, 3) with a minor between the ages of 12 and 16, and 4) an age difference of at least four years between the offender and the minor). Yes, as to (a)(2), which requires a perpetrator aged 16 or older and a victim under 13. Yes as to (a)(1), which now requires a 4 year age difference, if the offense was committed on or after April 28, 2006; prior to that date only a 3 year age difference was required. <i>See Estrada-Espinoza</i> , 546 F.3d 1147 (9 <sup>th</sup> Cir. 2008) (definition of SAM severely limited, criminal statute must contain the following elements: 1) a mens rea level of knowingly; 2) a sexual act; 3) with a minor between the ages of 12 and 16; and 4) an age difference of at least four years between the offender and the minor). <i>See also Valencia-Barragan</i> . --- F.3d ---, 2010 WL 1292169 (9 <sup>th</sup> Cir. 2010) (Finding a that similar WA statute categorically constitutes sexual abuse of a minor as sexual conduct with children under 14 years of age is per se abusive. However, note that the fourth element of <i>Estrada-Espinoza</i> could present a

## Quick Reference Chart for Determining Removability for Alaska State Offenses

		<p>significant problem for (a)(2) and (3) since these provisions may apply even if there is no appreciable difference in age. (b) (5)</p> <p><b>101(a)(43)(F) COV:</b> No, statutory rape crime. <i>See Valencia-Gonzales</i>  <b>CIMT:</b> Yes.  <b>Domestic Violence:</b> Yes, if record of conviction shows use/threat of force and relationship to victim. Note that statute provides different age criteria for victims that are related to offenders.  <b>Crime of Child Abuse:</b> Yes</p>
11.41.436(a)(2)	Sexual abuse of a minor in the second degree	<p><b>AF 101(a)(43)(A):</b> Yes. Categorical match to the generic definition set out by <i>Medina-Villa</i> ( 1) the conduct prohibited by the criminal statute is sexual, 2) the statute protects a minor, and 3) the statute requires abuse). Sexual conduct with children younger than 14 is per se abusive. <i>See U.S. v. Valencia-Barragan</i>, 608 F.3d 1103, 1107 (9th Cir. 2010); <i>U.S. v. Baron-Medina</i>, 197 F.3d 1144, 1147 (9th Cir. 1999).</p> <p><b>101(a)(43)(F) COV:</b></p>
11.41.436(a)(3)	Sexual abuse of a minor in the second degree	<p><b>AF 101(a)(43)(A):</b> No, even if victim is a child and offense was with sexual motivation. Neither a sexual act, as required by <i>Estrada-Espinosa</i> ( 1) a mens rea level of knowingly, 2) a sexual act, 3) with a minor between the ages of 12 and 16, and 4) an age difference of at least four years between the offender and the minor), nor sexual conduct, as required by <i>Medina-Villa</i> ( 1) the conduct prohibited by the criminal statute is sexual, 2) the statute protects a minor, and 3) the statute requires abuse), is an element of the statute.</p> <p><b>101(a)(43)(F) COV</b></p>
11.41.436(a)(4)	Sexual abuse of a minor in the second degree	<p><b>AF 101(a)(43)(A):</b> No, even if victim is a child and offense was with sexual motivation. Neither a sexual act, as required by <i>Estrada-Espinosa</i> ( 1) a mens rea level of knowingly, 2) a sexual act, 3) with a minor between the ages of 12 and 16, and 4) an age difference of at least four years between the offender and the minor), nor sexual conduct, as required by <i>Medina-Villa</i> ( 1) the conduct prohibited by the criminal statute is sexual, 2) the statute protects a minor, and 3) the statute requires abuse), is an element of the statute.</p> <p><b>101(a)(43)(F) COV</b></p>
11.41.436(a)(5)	Sexual abuse of a minor in the second degree	<p><b>AF 101(a)(43)(A):</b> No, even if victim is a child and offense was with sexual motivation. Neither a sexual act, as required by <i>Estrada-Espinosa</i> ( 1) a mens rea level of knowingly, 2) a sexual act, 3) with a minor between the ages of 12 and 16, and 4) an age difference of at least four years between the offender and the minor), nor sexual conduct, as required by <i>Medina-Villa</i> ( 1) the conduct prohibited by the criminal statute is sexual, 2) the statute protects a minor, and 3) the statute requires abuse), is an element of the statute.</p> <p><b>101(a)(43)(F) COV:</b> (b) (5)</p>
11.41.436(a)(6)	Sexual abuse of a minor in the second degree	<p><b>AF 101(a)(43)(A):</b> No, even if victim is a child and offense was with sexual motivation. Neither a sexual act, as required by <i>Estrada-Espinosa</i> ( 1) a mens rea level of knowingly, 2) a sexual act, 3) with a minor between the ages of 12 and 16, and 4) an age difference of at least four years between the offender and the minor), nor sexual conduct, as required by <i>Medina-Villa</i> ( 1) the conduct prohibited by the criminal statute is sexual, 2) the statute protects a minor, and 3) the statute requires abuse), is an</p>

## Quick Reference Chart for Determining Removability for Alaska State Offenses

		element of the statute. <b>101(a)(43)(F) COV</b>
11.41.436(a)(7)	Sexual abuse of a minor in the second degree	AF 101(a)(43)(A): Yes. Categorical match to the generic definition set out by <i>Medina-Villa</i> ( 1) the conduct prohibited by the criminal statute is sexual, 2) the statute protects a minor, and 3) the statute requires abuse). Sexual conduct with children younger than 14 is per se abusive. See <i>U.S. v. Valencia-Barragan</i> , 608 F.3d 1103, 1107 (9th Cir. 2010); <i>U.S. v. Baron-Medina</i> , 197 F.3d 1144, 1147 (9th Cir. 1999). <b>101(a)(43)(F) COV</b> <b>(b) (5)</b> [REDACTED]
11.41.438	Sexual abuse of a minor in the third degree	[REDACTED]

## **Quick Reference Chart for Determining Removability for Alaska State Offenses**

## Quick Reference Chart for Determining Removability for Alaska State Offenses

11.41.500	Robbery in the first degree	<b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentence imposed is a year or longer. <b>(G):</b> Yes, if sentence imposed is a year or longer. <b>CIMT:</b> Yes. See <i>Cuevas-Gaspar v. Gonzales</i> , 430 F.3d 1013 (9 <sup>th</sup> Cir. 2005) (crimes of theft or larceny are CIMTs). <i>Matter Diaz-Lizarraga</i> , 26 I&N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i> , 26 I&N Dec. 856 (BIA 2016) <b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 ( <i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i> , -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK) <b>Firearm:</b> Yes, if record of conviction shows weapon is a firearm.
11.41.510	Robbery in the second degree	<b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentence imposed is a year or longer. <b>(G):</b> Yes, if sentence imposed is a year or longer. <b>CIMT:</b> Yes. See <i>Cuevas-Gaspar v. Gonzales</i> , 430 F.3d 1013 (9 <sup>th</sup> Cir. 2005) (crimes of theft or larceny are CIMTs). <i>Matter Diaz-Lizarraga</i> , 26 I&N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i> , 26 I&N Dec. 856 (BIA 2016) <b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 ( <i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i> , -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)
11.41.520	Extortion	<b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentence imposed is a year or longer and record of conviction shows use/threat of force. <b>CIMT:</b> Yes.
11.41.530	Coercion	<b>Aggravated Felony:</b> 101(a)(43)(F): Yes, if sentenced to a year or more and under §11.41.530(a)(1). Under other subsections, record of conviction needs to establish use of force. <b>CIMT:</b> Yes. <b>Domestic Violence:</b> Yes, if record of conviction shows domestic relationship and conviction under subsec. (a)(1). Under other subsections, record of conviction needs to establish use of force.
11.46.120 (F - §46-211)	Theft in the first degree	<b>Aggravated Felony:</b> 101(a)(43)(G): Yes, if sentence imposed is a year or longer. <b>CIMT:</b> MAYBE. See <i>Cuevas-Gaspar v. Gonzales</i> , 430 F.3d 1013 (9 <sup>th</sup> Cir. 2005) (crimes of theft or larceny are CIMTs). <i>Matter Diaz-Lizarraga</i> , 26 I&N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i> , 26 I&N Dec. 856 (BIA 2016) <b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 ( <i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i> , -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)
11.46.130 (F - §46-211)	Theft in the second degree	<b>Aggravated Felony:</b> 101(a)(43)(G): Yes, if sentence imposed is a year or longer. <b>CIMT:</b> Yes. See <i>Cuevas-Gaspar v. Gonzales</i> , 430 F.3d 1013 (9 <sup>th</sup> Cir. 2005) (crimes of theft or larceny

## Quick Reference Chart for Determining Removability for Alaska State Offenses

		<p>are CIMTs).</p> <p><i>Matter Diaz-Lizarraga</i>, 26 I&amp;N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i>, 26 I&amp;N Dec. 856 (BIA 2016)</p> <p><b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 (<i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i>, -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)</p>
11.46.140 (J-§42.15.020(b)(1)) (A-§8.15.010) (F - §46-211)	Theft in the third degree (J-Larceny of money or property) (A-Theft defined) (F – Nuisance subsec(11))	<p><b>Aggravated Felony: 101(a)(43)(G):</b> Yes, if sentence imposed is a year or longer.</p> <p><b>CIMT:</b> Yes. See <i>Cuevas-Gaspar v. Gonzales</i>, 430 F.3d 1013 (9<sup>th</sup> Cir. 2005) (crimes of theft or larceny are CIMTs). <i>Matter Diaz-Lizarraga</i>, 26 I&amp;N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i>, 26 I&amp;N Dec. 856 (BIA 2016)</p> <p><b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 (<i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i>, -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)</p>
11.46.150 (J-§42.15.02.(b)(2)) (A-§8.15.010) (F - §46-211)	Theft in the fourth degree (J-Larceny of money or property) (A-Theft defined) (F – Nuisance subsec(11))	<p><b>Aggravated Felony: 101(a)(43)(G):</b> Yes, if sentence imposed is a year or longer.</p> <p><b>CIMT:</b> Yes. See <i>Cuevas-Gaspar v. Gonzales</i>, 430 F.3d 1013 (9<sup>th</sup> Cir. 2005) (crimes of theft or larceny are CIMTs). <i>Matter Diaz-Lizarraga</i>, 26 I&amp;N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i>, 26 I&amp;N Dec. 856 (BIA 2016)</p> <p><b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 (<i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i>, -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)</p>
11.46.160 (A - §8.15.020) (J - §42.15.050) (F - §46-211)	Theft of lost or mislaid property (A – Theft of lost property) (J – Retention of lost property) (F – Nuisance subsec(11))	<p><b>Aggravated Felony: 101(a)(43)(G):</b> Yes, if sentence imposed is a year or longer.</p> <p><b>CIMT:</b> Yes. See <i>Cuevas-Gaspar v. Gonzales</i>, 430 F.3d 1013 (9<sup>th</sup> Cir. 2005) (crimes of theft or larceny are CIMTs). <i>Matter Diaz-Lizarraga</i>, 26 I&amp;N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i>, 26 I&amp;N Dec. 856 (BIA 2016)</p> <p><b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 (<i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i>, -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)</p>

## Quick Reference Chart for Determining Removability for Alaska State Offenses

11.46.180 (A - §8.15.030) (J - §42.15.080) (F - §46-211)	Theft by deception (A – Theft by deception) (J – Theft by deception) (F – Nuisance subsec(11))	<b>Aggravated Felony:</b> 101(a)(43)(G): Yes, if sentence imposed is a year or longer. <b>CIMT:</b> Yes. See <i>Cuevas-Gaspar v. Gonzales</i> , 430 F.3d 1013 (9 <sup>th</sup> Cir. 2005) (crimes of theft or larceny are CIMTs). <i>Matter Diaz-Lizarraga</i> , 26 I&N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i> , 26 I&N Dec. 856 (BIA 2016). <b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 ( <i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i> , -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)
11.46.190 (J - §42.15.030) (F - §46-211)	Theft by receiving (J – Buying, receiving or concealing stolen property) (F – Nuisance subsec(11))	<b>Aggravated Felony:</b> 101(a)(43)(G): (b) (5) [REDACTED]. <b>CIMT:</b> <i>Matter Diaz-Lizarraga</i> , 26 I&N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i> , 26 I&N Dec. 856 (BIA 2016). <b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 ( <i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i> , -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)
11.46.200 (A - §8.15.040) (J - §42.15.070) (F - §46-211)	Theft of services (A, J – Theft of Services) (F – Nuisance subsec(11))	<b>Aggravated Felony:</b> 101(a)(43)(G): No. Theft of services or labor is not a “theft offense.” <i>Corona-Sanchez</i> , 291 F.3d 1201, 1208 (9 <sup>th</sup> Cir. 2002). <b>CIMT:</b> (b) (5) [REDACTED].
11.46.210 (J - §42.15.025)	Theft by failure to make required disposition of funds received or held (J – Theft by failure to make required disposition of funds received or held)	<b>Aggravated Felony:</b> 101(a)(43)(G): Yes, if sentence imposed is a year or longer <b>(M)(i): (b) (5)</b> [REDACTED]
11.46.220 (A - §8.15.050) (J - §42.15.040)	Concealment of merchandise (A – Theft by shoplifting) (J – Concealment of merchandise)	<b>Aggravated Felony:</b> 101(a)(43)(G): Yes, if sentence imposed is a year or longer. <b>CIMT:</b> Yes as to 11.46.220. No as to A & 8.15.050.B (concealment), which has no requirement to establish intent to deprive owner of the property. <b>Other:</b> Note that offenses of this nature may fall under the “petty offense” exception, INA § 212(a)(2)(A)(ii)(II). This exception only applies if the alien has one conviction.
11.46.280 (F - §46-78) (J - §42.15.060)	Issuing a bad check (F – Issuing a bad check) (J – Bad checks)	<b>Aggravated Felony:</b> 101(a)(43)(G): Yes, if sentence imposed is a year or longer. <b>(M)(i): (b) (5)</b> [REDACTED]

## **Quick Reference Chart for Determining Removability for Alaska State Offenses**

		record of conviction as described in <i>Taylor v. United States</i> , 495 U.S. 575 (1990). <i>Kawashima v. Mukasey</i> , 530 F.3d 1111 (9 <sup>th</sup> Cir. 2008) overturned. <b>CIMT:</b> Yes.
11.46.300	Burglary in the first degree	<b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentence imposed is a year or longer and record of conviction shows use/threat of force. <b>(G):</b> Yes, if sentence imposed is a year or longer. Could qualify both as a burglary offense or as a theft offense if record of conviction shows underlying offense is a theft offense. <b>CIMT:</b> (b) (5)  <b>Domestic Violence:</b> Yes, if record of conviction shows relationship and underlying offense is against the person and not property.
11.46.310	Burglary in the second degree	<b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentence imposed is a year or longer and record of conviction shows use/threat of force. <b>(G):</b> Yes, if sentence imposed is a year or longer. Could qualify both as a burglary offense or as a theft offense if record of conviction shows underlying offense is a theft offense <b>CIMT:</b> (b) (5)  <b>Domestic Violence:</b> Yes, if record of conviction shows relationship and underlying offense is against the person and not property.
11.46.315	Possession of burglary tools	<b>CIMT:</b> (b) (5)
11.46.320	Criminal trespass in the first degree	<b>CIMT:</b> (b) (5)
11.46.330	Criminal trespass in the second degree	<b>CIMT:</b> No.
11.46.360	Vehicle theft in the first degree	<b>Aggravated Felony: 101(a)(43)(G):</b> Yes, if sentence imposed is a year or longer. <b>CIMT:</b> (b) (5)  <b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 ( <i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i> , -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)
11.46.365	Vehicle theft in the second degree	<b>Aggravated Felony: 101(a)(43)(G):</b> Yes, if sentence imposed is a year or longer. <b>CIMT:</b> (b) (5)

## Quick Reference Chart for Determining Removability for Alaska State Offenses

		<p><i>Matter of M-</i>, 2 I&amp;N Dec. 686 (BIA 1946)</p> <p><i>Matter Diaz-Lizarraga</i>, 26 I&amp;N Dec. 847 (BIA 2016) (holding that a theft offense is a CIMT if it involves “a taking or exercise of control over another’s property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded”); <i>Matter of Obeya</i>, 26 I&amp;N Dec. 856 (BIA 2016)</p> <p><b>N.B.</b> For convictions sustained prior to Nov. 16, 2016 (<i>Diaz-Lizarraga</i> publication date), crime cannot be retroactively sustained as a CIMT bc incl. non-permanent takings. <i>Garcia-Martinez v. Sessions</i>, -- F.3d --, 2018 WL 1702839 (9th Cir. April 9, 2018) (SK)</p>
11.46.400	Arson in the first degree	<p><b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentenced to a year or more.</p> <p><b>CIMT:</b> Yes. See <i>Rodriguez-Herrera v. INS</i>, 52 F.3d 238, 239 n.2 (9<sup>th</sup> Cir. 1995) (“That arson necessarily involves moral turpitude is undisputed.”).</p>
11.46.410	Arson in the second degree	<p><b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentenced to a year or more.</p> <p><b>CIMT:</b> Yes. See <i>Rodriguez-Herrera v. INS</i>, 52 F.3d 238, 239 n.2 (9<sup>th</sup> Cir. 1995) (“That arson necessarily involves moral turpitude is undisputed.”).</p>
11.46.420	Arson in the third degree	<p><b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentence to a year or more.</p> <p><b>CIMT:</b> Yes. See <i>Rodriguez-Herrera v. INS</i>, 52 F.3d 238, 239 n.2 (9<sup>th</sup> Cir. 1995) (“That arson necessarily involves moral turpitude is undisputed.”).</p>
11.46.500	Forgery in the first degree	<p><b>Aggravated Felony: 101(a)(43)(R):</b> (b) (5)</p> <p>See <i>Jordan v. DeGeorge</i>, 341 U.S. 223 (1951) (“Crimes in which fraud was an ingredient have always been regarded as involving moral turpitude.”).</p>
11.46.505	Forgery in the second degree	<p><b>Aggravated Felony: 101(a)(43)(R):</b> (b) (5)</p> <p>See <i>Jordan v. DeGeorge</i>, 341 U.S. 223 (1951) (“Crimes in which fraud was an ingredient have always been regarded as involving moral turpitude.”).</p>
11.46.510	Forgery in the third degree	<p><b>Aggravated Felony: 101(a)(43)(R):</b> (b) (5)</p> <p>See <i>Jordan v. DeGeorge</i>, 341 U.S. 223 (1951) (“Crimes in which fraud was an ingredient have always been regarded as involving moral turpitude.”).</p>
11.46.600	Scheme to defraud	<p><b>Aggravated Felony: 101(a)(43)(M)(i):</b> (b) (5)</p> <p>See <i>Jordan v. DeGeorge</i>, 341 U.S. 223 (1951) (“Crimes in which fraud was an ingredient have always been regarded as involving moral turpitude.”).</p>
11.46.670	Commercial bribery	<p><b>Aggravated Felony: 101(a)(43)(R):</b> Yes</p> <p><b>CIMT:</b> Yes. See <i>Mendez-Mendez v. Mukasey</i>, 525 F.3d 828 (9<sup>th</sup> Cir. 2008).</p>
11.51.100 (A - §8.10.030)	Endangering the welfare of a child in the first degree (A – Child abuse)	<p><b>Aggravated Felony: 101(a)(43)(A):</b> N See <i>Estrada-Espinoza</i>, 546 F.3d 1147 (9<sup>th</sup> Cir. 2008) (definition of SAM severely limited, criminal statute must contain the following elements: 1) a mens rea level of knowingly; 2) a sexual act; 3) with a minor between the ages of 12 and 16; and 4) an age difference of at least four years between the offender and the minor).</p> <p><b>CIMT:</b> Yes.</p> <p><b>Crime of child abuse:</b> Yes.</p>
11.51.110 (A - §8.10.040)	Endangering the welfare of a child in the second degree	<p><b>CIMT:</b> (b) (5)</p>

## Quick Reference Chart for Determining Removability for Alaska State Offenses

	(A – Child neglect)	Controlled substance: No
11.56.100	Bribery	<b>Aggravated Felony: 101(a)(43)(R):</b> Yes, if sentence imposed is greater than one year <b>(S):</b> Likely, if sentenced imposed is greater than one year and target of bribery is a witness. <b>CIMT:</b> Yes. <i>See Mendez-Mendez v. Mukasey</i> , 525 F.3d 828 (9 <sup>th</sup> Cir. 2008).
11.56.110	Receiving a bribe	<b>Aggravated Felony: 101(a)(43)(R):</b> (b) (5)  <b>CIMT:</b> Yes.
11.56.200	Perjury	<b>Aggravated Felony: 101(a)(43)(S):</b> (b) (5)  <b>See Nelson v. State</b> , 546 P.2d 592 (Alaska 1976) <b>CIMT:</b> No. Unlike the federal perjury statute at 18 U.S.C. § 1621, the Alaska statute does not require that the falsehood relate to a material matter. <i>See Nelson v. State</i> , 546 P.2d 592 (Alaska 1976)
11.56.300	Escape in the first degree	<b>Aggravated Felony: 101(a)(43)(Q):</b> Yes, if underlying conviction was punishable by imprisonment for a term of 5 years or more. <b>(T):</b> (b) (5)
11.56.310	Escape in the second degree	<b>Aggravated Felony: 101(a)(43)(Q):</b> (b) (5)
11.56.320	Escape in the third degree	<b>Aggravated Felony: 101(a)(43)(Q):</b> (b) (5)
11.56.330	Escape in the fourth degree	<b>Aggravated Felony: 101(a)(43)(Q):</b> (b) (5)
11.56.740 (J – §42.30.060)	Violating a protective order (J – Violating a protective order)	<b>CIMT:</b> No <b>Violation of a protection order:</b> (b) (5)
11.56.800	False information or report	<b>CIMT:</b> (b) (5)  <b>Note:</b> A conviction under 11.56.800(5) would almost certainly be a CIMT under the standard established in <i>Carty v. Ashcroft</i> , 395 F.3d 1081 (9 <sup>th</sup> Cir. 2005), in which providing false information on a tax document was held to be a CIMT.
11.61.125	Distribution of child pornography	<b>Aggravated Felony: 101(a)(43)(I):</b> Yes <b>CIMT:</b> Yes.
11.61.127	Possession of child	<b>Aggravated Felony: 101(a)(43)(I):</b> Yes

## Quick Reference Chart for Determining Removability for Alaska State Offenses

	<u>pornography</u>	<b>CIMT:</b> Yes. <i>See U.S. v. Santacruz</i> , 563 F.3d 894 (9 <sup>th</sup> Cir. 2009).
11.61.190	Misconduct involving weapons in the first degree	<b>Aggravated Felony: 101(a)(43)(F):</b> Yes <b>Firearms:</b> Yes, essential element of this charge <b>CIMT:</b> Yes. Although not addressing this specific offense, the 9 <sup>th</sup> Circuit has made it very clear that assault with a deadly weapon is a CIMT, <i>Niu v. INS</i> , 963 F.2d 379 (9 <sup>th</sup> Cir. 1992), and the elements of this offense parallel an assault charge.
11.61.195	Misconduct involving weapons in the second degree	<b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentence imposed is greater than one year. <b>Firearms:</b> Yes, essential element of this charge <b>CIMT:</b> (b) (5) 11.61.195(a)(3)(A) requires only a reckless mens rea. <i>See Matter of Silva-Trevino</i> , 24 I&N Dec. 687 (A.G. 2008) (CIMT requires both reprehensible conduct and some degree of scienter).
11.61.200	Misconduct involving weapons in the third degree	<b>Aggravated Felony: 101(a)(43)(F):</b> Yes, if sentence imposed is greater than one year. <b>Firearms:</b> Yes, if the conviction documents establish the weapon was a firearm <b>CIMT:</b> (b) (5)  <i>See U.S. v. Martinez-Martinez</i> , 369 F.3d 1076 (9 <sup>th</sup> Cir. 2004) (intoxication, even if voluntary, is a defense to the mens rea of specific intent in the 9 <sup>th</sup> Circuit). Juneau §42.20.040 is geared more toward negligence, which probably rules out CIMT completely. <i>See Matter of Silva-Trevino</i> , 24 I&N Dec. 687 (A.G. 2008) (CIMT requires both reprehensible conduct and some degree of scienter).
11.61.210	Misconduct involving weapons in the fourth degree	<b>Aggravated Felony: 101(a)(43)(F):</b> No. <b>Firearms:</b> Yes, if record of conviction reflects that weapon was a firearm. <b>CIMT:</b> (b) (5)
11.61.210(a)(5)	Misconduct involving weapons in the fourth degree	<b>Aggravated Felony: 101(a)(43)(F):</b> No. <b>CIMT:</b> (b) (5).
11.61.220	Misconduct involving weapons in the fifth degree	<b>Aggravated Felony: 101(a)(43)(F):</b> No. <b>CIMT:</b> (b) (5)
11.66.100	Prostitution	<b>CIMT:</b> Yes.
11.71.010	Misconduct involving a controlled substance in the first degree	<b>Aggravated Felony: 101(a)(43)(B):</b> Yes for (a)(1) and (2) delivery. <b>Controlled Substance:</b> Yes
11.71.020	Misconduct involving a controlled substance in the second degree	<b>Aggravated Felony 101(a)(43)(B):</b> Yes <b>Controlled Substance:</b> Yes
11.71.030	Misconduct involving a controlled substance in the third degree	<b>Aggravated Felony 101(a)(43)(B):</b> Yes for (a)(1) and (2) manufacture, delivery and possession with intent to deliver. No for (a)(3) possession on or near school grounds or on a school bus. <b>Controlled Substance:</b> Yes
11.71.040	Misconduct involving a controlled substance in the fourth degree	<b>Aggravated Felony 101(a)(43)(B):</b> Yes for manufacture, delivery or possession with intent to manufacture or deliver controlled substances. <b>Controlled Substance:</b> Yes

## Quick Reference Chart for Determining Removability for Alaska State Offenses

		<p><b>*Note:</b> If the record of conviction reflects conviction under 11.71.040(a)(6) – (10), there is an element of fraud in these offenses that could be used to support a CIMT charge.</p> <p><b>Aggravated Felony 101(a)(43)(B); (b) (5)</b>  <span style="background-color: black; color: black;">[REDACTED]</span></p> <p><b>Controlled Substance:</b> Yes</p>
11.71.050	Misconduct involving a controlled substance in the fifth degree	<p><b>Aggravated Felony 101(a)(43)(B); (b) (5)</b>  <span style="background-color: black; color: black;">[REDACTED]</span></p> <p><i>See also Dass v. Holder, --- F.3d ----, 2010 WL 3307494 (C.A.9 (Cal.)), 10 Cal. Daily Op. Serv. 11,052 (9<sup>th</sup> Cir 2010) (conviction for distributing listed chemicals—ephedrine and seudoephedrine—with <b>reasonable cause to believe they would be used to manufacture</b> methamphetamine, under 21 U.S.C. § 841(c)(2), qualifies as a “drug trafficking crime” and thus constitutes an “aggravated felony.”) ACC 11.71.060 does not contain this “reasonable cause to believe” language.</i></p> <p><b>Controlled Substance:</b> Yes</p>
11.71.060	Misconduct involving a controlled substance in the sixth degree	<p><b>Aggravated Felony 101(a)(43)(B); (b) (5)</b>  <span style="background-color: black; color: black;">[REDACTED]</span></p> <p><i>See also Dass v. Holder, --- F.3d ----, 2010 WL 3307494 (C.A.9 (Cal.)), 10 Cal. Daily Op. Serv. 11,052 (9<sup>th</sup> Cir 2010) (conviction for distributing listed chemicals—ephedrine and seudoephedrine—with <b>reasonable cause to believe they would be used to manufacture</b> methamphetamine, under 21 U.S.C. § 841(c)(2), qualifies as a “drug trafficking crime” and thus constitutes an “aggravated felony.”) ACC 11.71.060 does not contain this “reasonable cause to believe” language.</i></p> <p><b>Controlled Substance:</b> Yes</p>